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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re T.H., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

T.H.,

Defendant and Appellant.

A146129

(Contra Costa County
Super. Ct. No. J1301357)

As in a recent case decided by this court, *In re C.B.* (Aug. 30, 2016, A146277) __ Cal.App.4th __ [2016 Cal.App. Lexis 725], appellant T.H. (minor) challenges a juvenile court order denying his request to expunge DNA samples from the state's DNA database after his felony offense was redesignated a misdemeanor pursuant to Proposition 47, the Safe Neighborhoods and Schools Act, a measure that reduced the classification of certain crimes.¹ According to minor, his DNA samples should be expunged because, had his offense been classified as a misdemeanor at the time he admitted committing it, he would not have been required to submit the samples in the first place. Following the same legal reasoning applied by this court in *In re C.B.*, we reject minor's challenge and affirm the juvenile court's order.

¹All further statutory references are to the Penal Code unless otherwise specified.

PROCEDURAL BACKGROUND

In December 2013, the District Attorney for the City and County of San Francisco filed a petition pursuant to Welfare and Institutions Code section 602 alleging that minor committed second degree robbery.² (§ 212.5, subd. (c)) The juvenile court granted a motion allowing the district attorney to amend the petition to allege that minor committed felony grand theft (§ 487, subd. (c)) and misdemeanor assault with a deadly weapon (§ 245, subd. (a)(1)). Minor admitted the allegations of the amended petition. The matter was then transferred to minor's home county, Contra Costa County, for disposition.

In January 2014, the juvenile court adjudged minor a ward of the court and placed him on electronic monitoring for 180 days. The court ordered minor to submit to the collection of a DNA sample pursuant to section 296.1.

In June 2015, minor filed a petition pursuant to Proposition 47 requesting his felony grand theft adjudication be redesignated as a misdemeanor and that his DNA sample be expunged from the state database. Following a hearing, the juvenile court granted minor's request to redesignate his offense as a misdemeanor and, thus, recalculated his maximum confinement time, but denied his expungement request. After minor's request for reconsideration was denied, he filed a timely notice of appeal.

DISCUSSION

Minor raises a single issue on appeal: Did the juvenile court misconstrue Proposition 47 when finding he was not entitled to have his DNA samples expunged from the state's database after reclassifying his felony offense as a misdemeanor?

The standard of review is not in dispute: Questions regarding the proper interpretation of a voter initiative, like those of statutory interpretation, are reviewed on appeal de novo. (*Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1212 [rules of statutory interpretation apply to voter initiatives]; *Argaman v. Ratan* (1999) 73 Cal.App.4th 1173, 1176.) The fundamental rule of statutory construction is that we must

²Because the details of minor's offenses are not relevant to the issues raised on appeal, we limit our recitation of the facts to the procedural history of this matter.

ascertain the intent of the Legislature so as to effectuate the purpose of the law. (*Preston v. State Bd. of Equalization* (2001) 25 Cal.4th 197, 213.) “To determine the intent of legislation, we first consult the words themselves, giving them their usual and ordinary meaning.” (*DaFonte v. Up-Right, Inc.* (1992) 2 Cal.4th 593, 601.) “We do not, however, consider the statutory language in isolation; rather, we look to the entire substance of the statutes in order to determine their scope and purposes. [Citation.] That is, we construe the words in question in context, keeping in mind the statutes’ nature and obvious purposes. [Citation.] We must harmonize the various parts of the enactments by considering them in the context of the statutory frame work as a whole. [Citation.] If the statutory language is unambiguous, then its plain meaning controls. If, however, the language supports more than one reasonable construction, then we may look to extrinsic aids, including the ostensible objects to be achieved and the legislative history.” (*People v. Cole* (2006) 38 Cal.4th 964, 975.)

In this case, minor contends proper interpretation of Proposition 47 requires trial courts to expunge DNA samples submitted by criminal defendants (including juveniles) whose offenses are reclassified from felony to misdemeanor pursuant to section 1170.18. Relying on a recent decision from Division One of the Fourth District Court of Appeal, *Alejandro N. v. Superior Court* (2015) 238 Cal.App.4th 1209 (*Alejandro N.*), minor reasons that the juvenile court erred by denying his request to expunge his DNA record because, once his crime was reclassified as a misdemeanor, it was no longer a “qualifying offense” for purposes of the duty to submit DNA under the DNA and Forensic Identification Data Base and Data Bank Act of 1998, section 295 et seq. (hereinafter, DNA Database Act). (See § 296, subd. (a).)

This court recently addressed and rejected this precise argument in *In re C.B.*, A146277, filed August 30, 2016. In doing so, we concluded a felony offense reclassified as a misdemeanor under section 1170.18 should only be treated as a misdemeanor *going forward* from the time of reclassification and, thus, remains a qualifying offense for purposes of the DNA Database Act, precluding the offender from obtaining additional relief under section 1170.18 in the form of expungement. Applying the legal reasoning

fully set forth in *In re C.B.*, we reach the same conclusion herein and, thus, reject minor's challenge.

DISPOSITION

The juvenile court order denying minor's petition to order the expungement of his DNA samples is affirmed.

McGuiness, P.J.

I concur:

Jenkins, J.

POLLAK, J., — I dissent for the reasons stated in my dissent in *In re C.B.* (Aug. 30, 2016, A146277) __ Cal.App.4th __ [2016 Cal.App. Lexis 725].

Pollak, J.